

Remarks:

Regarding the objection to the Specification for alleged informalities:

The disclosure was objected to for alleged informalities. This objection is respectfully traversed.

Specifically, the disclosure was objected to for allegedly failing to list or name Reference #6 in FIG. 2. However, only FIG. 1 includes Reference #6. Thus, we assume that the Patent Office was referring to FIG. 1 and not FIG. 2 as set forth in the present Office Action.

The specification has been amended to identify that the first end of the gel 5 is referred to as "first end 7" and the opposing free end of the gel 5 is referred to as "free end 6" as illustrated and supported in FIG. 1. The specification was also amended to replace "free end 7" with "free end 6" to correct the typographical errors and maintain consistency with FIG. 1.

Thus, Applicants respectfully request withdrawal of the specification objection.

Regarding the rejection of claims 1-5, 11 and 12 under 35 USC 103(a) as being unpatentable over WO 00/24434 to O'Leary et al. (hereinafter "O'Leary") in view of DE 3239511 A1 to Jellinek et al. (hereinafter "Jellinek"):

The Applicants respectfully traverse the rejection of the foregoing claims in view of O'Leary further in view of Jellinek.

Prior to discussing the merits of the Examiner's position, the undersigned reminds the Examiner that the determination of obviousness under § 103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims

and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). There must be some suggestion, teaching, or motivation arising from what the prior art would have taught a person of ordinary skill in the field of the invention to make the proposed changes to the reference. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016, 1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976). "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

Neither O'Leary nor Jellinek, taken singly or in combination, teaches or suggests a device for perfuming, deodorising or sanitising air or enclosed spaces having separate timing means for proving an end-of-life indication wherein the timing means comprises

an additional element which visibly shrinks over the intended lifetime of the device and actuating means which, when actuated, activates the device to release the perfuming, deodorising or sanitising substance and activates the timing means as required by amended claim 1.

First, amended claim 1 incorporates the features of canceled claim 4. More specifically, amended claim 1 requires a device for perfuming, deodorising or sanitising air or enclosed spaces having separate timing means for providing an end-of-life indication wherein the timing means comprises an additional element which visibly shrinks over the intended lifetime of the device.

The Patent Office acknowledges at page 3 of the Office Action that O'Leary fails to teach or suggest a separate timing means. Additionally, the Patent Office does not allege that O'Leary teaches or suggests the features of canceled claim 4 and further introduces Jellinek as allegedly teaching timing means that comprises an additional element, which visibly shrinks over the intended lifetime of the device. However, Jellinek fails to remedy the deficiencies of O'Leary because Jellinek does not teach or suggest the timing means having an additional element which visibly shrinks over the intended lifetime of the device. Instead, Jellinek teaches an air freshener having a gel-like evaporating element that releases odor from the air freshener (see Abstract of Jellinek). Additionally, Jellinek teaches that the gel-like evaporating element shrinks in the course of evaporation to visually indicate the wearing out of the evaporating element (see Abstract of Jellinek). Further, the only element shrinking in the air freshener of Jellinek is the gel-like evaporating element which releases odor from the air freshener. Thus, Jellinek clearly fails to teach an additional element which visibly shrinks over the intended lifetime of the device as required in claim 1.

Jellinek also teaches that the gel-like evaporating element is surrounded by a circular wire which is attached to outer envelope parts such that when the gel-like evaporating element evaporates over time, the circular wire moves in relation to the gel and moves the

envelope parts. The circular wire of Jellinek is not the same as or similar to an additional element which visibly shrinks over the intended lifetime of the device as recited in claim 1. Thus, Jellinek fails to remedy the deficiencies of O'Leary as alleged by the Patent Office.

Secondly, amended claim 1 incorporates the features of canceled claim 9, which was not rejected under 35 U.S.C. §103(a) as being unpatentable over O'Leary in view of Jellinek. With failing to reject claim 9 in view of O'Leary and Jellinek, the Patent Office acknowledges that O'Leary and Jellinek, taken singly or in combination, fail to teach or suggest the features of amended claim 1.

Because these features of independent claim 1 are not taught or suggested by O'Leary and Jellinek, taken singly or in combination, O'Leary and Jellinek would not have rendered the features of claim 1 obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 6 and 7 under 35 USC 103(a) as being unpatentable O'Leary in view Jellinek and further in view of US 2002/0173762 A1 to Ishikawa et al. (hereinafter "Ishikawa"):

The Applicants respectfully traverse the rejection of the foregoing claims in view of O'Leary further in view of Jellinek and further in view of Ishikawa.

Ishikawa does not remedy the deficiencies of O'Leary and Jellinek as described above with respect to claim 1, from which claims 6 and 7 depend.

None of O'Leary, Jellinek and Ishikawa, taken singly or in combination, teaches or suggests a device for perfuming, deodorising or sanitising air or enclosed spaces having

separate timing means for proving an end-of-life indication wherein the timing means comprises an additional element which visibly shrinks over the intended lifetime of the device and actuating means which, when actuated, activates the device to release the perfuming, deodorising or sanitising substance and activates the timing means as recited in claim 1. Nowhere does Ishikawa teach or suggest an additional element comprising particles which shrink, compact or dissolve as alleged by the Patent Office. Instead of disclosing an additional element comprising particles which shrink, compact or dissolve as alleged by the Patent Office at page 4 of the Office Action, paragraph [0027] of Ishikawa merely sets forth "the super-absorbent polymer particles 18 may be selected from a group of materials including a hydrolyzed compound of starch-acrylic acid graft copolymer, starch-based water absorbent resin obtained by neutralizing starch-acrylic acid graft copolymer, saponified vinyl acetate-acrylic ester copolymer, partially neutralized polyacrylic acid, and a polymer obtained from maleic anhydride-isobutylene copolymer and water-soluble ethylene-based unsaturated monomer."

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claim 8 under 35 USC 103(a) as being unpatentable over O'Leary in view of Jellinek and further in view of US 2002/0110498 to Dundale et al. (hereinafter "Dundale"):

The Applicants respectfully traverses the rejection of the foregoing claims in view of O'Leary further in view of Jellinek and further in view of Dundale.

Amended claim 1 incorporates the features of canceled claims 4 and 9, which were not rejected under 35 U.S.C. §103(a) as being unpatentable over O'Leary in view of Jellinek and further in view of Dundale.

Dundale does not remedy the deficiencies of O'Leary and Jellinek as described above with respect to claim 1, from which claim 8 depends.

None of O'Leary, Jellinek and Dundale, taken singly or in combination, teaches or suggests a device for perfuming, deodorising or sanitising air or enclosed spaces having separate timing means for proving an end-of-life indication wherein the timing means comprises an additional element which visibly shrinks over the intended lifetime of the device and actuating means which, when actuated, activates the device to release the perfuming, deodorising or sanitising substance and activates the timing means as recited in claim 1. Nowhere does Dundale teach or suggest an additional element which visibly shrinks over the intended lifetime of the device. Instead, Dundale teaches a composition that is able to display a clear change of color after 29 days to indicate when the air freshener starts to become inefficient in use (see paragraph [0045] of Dundale).

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 9 and 10 under 35 USC 103(a) as being unpatentable over O'Leary in view of Jellinek and further in view of US 4,161,284 to Rattan et al. (hereinafter "Rattan"):

The Applicants respectfully traverse the rejection of the foregoing claims in view of O'Leary further in view of Jellinek and further in view of Rattan.

Claim 9 is canceled. Thus, this rejection is moot with respect to claim 9.

Rattan does not remedy the deficiencies of O'Leary and Jellinek as described above with respect to claim 1, from which claim 10 depends.

None of O'Leary, Jellinek and Rattan, taken singly or in combination, teaches or suggests a device for perfuming, deodorising or sanitising air or enclosed spaces having separate timing means for proving an end-of-life indication wherein the timing means comprises an additional element which visibly shrinks over the intended lifetime of the device and actuating means which, when actuated, activates the device to release the perfuming, deodorising or sanitising substance and activates the timing means as recited in claim 1. Rattan merely teaches that a fragrance slowly evaporates and disseminates into the atmosphere through holes in an outer casing which were punched by a consumer (see Abstract of Rattan). However, Rattan fails to disclose an additional element which visibly shrinks over the intended lifetime of the device as required by claim 1.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claim 13 under 35 USC 103(a) as being unpatentable over O'Leary in view of Jellinek and further in view of US 4,702,418 to Carter et al. (hereinafter "Carter"):

The Applicants respectfully traverse the rejection of the foregoing claims in view of O'Leary further in view of Carter.

Carter does not remedy the deficiencies of O'Leary and Jellinek as described above with respect to claim 1, from which claim 13 depends.

None of O'Leary, Jellinek and Carter, taken singly or in combination, teaches or suggests a device for perfuming, deodorising or sanitising air or enclosed spaces having separate timing means for proving an end-of-life indication wherein the timing means comprises an additional element which visibly shrinks over the intended lifetime of the device and actuating means which, when actuated, activates the device to release the perfuming, deodorising or sanitising substance and activates the timing means as recited in claim 1.

Carter merely discloses that when the sensed fluid level falls below a predetermined amount, a signal is provided to indicator which provides a visual or audio signal indicating that the fluid needs to be refilled and that cartridge requires replacement (see col. 6, lines 53-57 of Carter). Nowhere does Carter teach or suggest an additional element which visibly shrinks over the intended lifetime of the device and actuating means which, when actuated, activates the device to release the perfuming, deodorising or sanitising substance and activates the timing means as required by claim 1.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 14 and 15 under 35 USC 103(a) as being unpatentable over O'Leary in view of Jellinek and further in view of US 5,574,377 to Marquez-Lucero et al. (hereinafter "Marquez-Lucero"):

The Applicants respectfully traverse the rejection of the foregoing claims in view of O'Leary further in view of Jellinek and further in view of Marquez-Lucero.

Marquez-Lucero does not remedy the deficiencies of O'Leary and Jellinek as described above with respect to claim 1, from which claims 14 and 15 depend.

None of O'Leary, Jellinek and Marquez-Lucero, taken singly or in combination, teaches or suggests a device for perfuming, deodorising or sanitising air or enclosed spaces having separate timing means for providing an end-of-life indication wherein the timing means comprises an additional element which visibly shrinks over the intended lifetime of the device and actuating means which, when actuated, activates the device to release the perfuming, deodorising or sanitising substance and activates the timing means as recited in claim 1. Marquez-Lucero merely discloses a device for detection of the presence of organic solvents and a process for the fabrication of the device. Nowhere does Marquez-Lucero teach or suggest an additional element which visibly shrinks over

the intended lifetime of the device and actuating means which, when actuated, activates the device as required by claim 1.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience. The early issuance of a *Notice of Allowability* is solicited.

PETITION FOR A TWO-MONTH EXTENSION OF TIME

The applicants respectfully petition for a two-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

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CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully submitted,

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Date